

STATE OF MICHIGAN
COURT OF APPEALS

MARCIA SNIECINSKI,

Plaintiff-Appellee,

v

BLUE CROSS AND BLUE SHIELD OF
MICHIGAN,

Defendant-Appellant.

UNPUBLISHED

March 9, 2001

No. 212788

Wayne Circuit Court

LC No. 96-616254-CZ

Before: Gribbs, P.J., and M.J. Kelly and Sawyer, JJ.

SAWYER, J. (*concurring in part and dissenting in part*).

I concur with the majority except as to its determination as to defendant's claim that it was entitled to judgment notwithstanding the verdict with respect to plaintiff's emotional distress claim.

In this case, plaintiff relies only on her testimony to support her emotional distress claim. Although Michigan law allows recovery for mental anguish based on a plaintiff's own testimony, there must be "specific and definite evidence of [a plaintiff's] mental anguish, anxiety or distress." *Wiskotoni v Michigan Nat'l Bank-West*, 716 F2d 378, 389 (CA 6, 1983) (applying Michigan law); see also *Vachon v Todorovich*, 356 Mich 182, 188; 97 NW2d 122 (1959).

Here, plaintiff testified that she was humiliated and upset about returning to Blue Care Network of East Michigan in an inferior position. She explained that she was working side-by-side with people whom she had worked with for years and outperformed, but was making 50% less money and was in an inferior position. Plaintiff indicated that her coworkers asked her questions about why she did not get the job at BCBSM, which greatly upset and humiliated her. She also testified that she felt that her entire future had been "stripped away." I find that this evidence is insufficient to support an award for emotional distress, as plaintiff failed to present any "specific and definite evidence of mental anguish, anxiety or distress," as she was required to do. *Wiskotoni, supra*. Rather, plaintiff's proffered evidence more closely resembles the level of evidence presented in *Vachon* and *Wiskotoni*, which was found to be insufficient to support a

claim of emotional distress. Accordingly, I would reverse the trial court's judgment with regard to the non-economic claim.

Therefore, I would affirm in part and reverse in part.

/s/ David H. Sawyer